

PT 01-41

Tax Type: Property Tax
Issue: Charitable Ownership/Use
Parking Lot Exemption

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

**ADVOCATE HEALTH &
HOSPITALS CORPORATION,
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 00-PT-0093

**Real Estate Exemption
For 1999 Tax Year**

P.I.N. 09-22-200-034-0000

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Thomas J. McCracken, Jr., McCracken & Walsh on behalf of Advocate Health & Hospitals Corporation.

SYNOPSIS: This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Number 09-22-200-034-0000 (hereinafter the “subject property”) should be exempt from 1999 real estate taxes under section 15-65 of the Property Tax Code. 35 ILCS 200/15-65.

This controversy arose as follows: On May 11, 2000, Advocate Health & Hospitals Corporation (hereinafter “Advocate”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 1999 real

estate taxes for the subject property. The Board reviewed Advocate's Complaint and recommended that 26.12% of the building and site and 100% of the parking lot be exempt, with the remainder of the building and site not exempt as property not in exempt use. This partial exemption was identical to an exemption granted in 1997, and was still in effect in 1998. The Illinois Department of Revenue (hereinafter the "Department") accepted the Board's recommendation in a determination dated November 9, 2000. Advocate filed a timely appeal of the Department's determination. On May 16, 2001, a formal administrative hearing was held with Michael Kerns, Vice-President and Associate General Counsel for Advocate, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department's jurisdiction over this matter and its position that, in 1999, 26.12% of the building and site and 100% of the parking lot were exempt and 73.88% of the building and site were taxable as property not in exempt use.
2. The subject property is known as the Yachtman Pavilion and Yachtman Children's Hospital. Yachtman Pavilion is located to the east of Lutheran General Hospital and is physically connected to it. Lutheran Deaconess Home and Hospital of Chicago acquired the subject property by warranty deed on August 1, 1956. Tr. pp. 10-13, 32; Applicant's Ex. Nos. 1 and 2.

3. On January 1, 1997, Lutheran General Hospital, Advocate Health and Hospitals Corporation and Evangelical Hospitals Corporation merged with the surviving corporation named Evangelical Hospital Corporation. Tr. p. 14; Applicant's Group Ex. No. 2-D.
4. On January 1, 1997, Evangelical Hospital Corporation amended its "Articles of Incorporation" changing the name of the merged corporation to "Advocate Health and Hospitals Corporation." Tr. pp. 14-15; Applicant's Group Ex. No. 2-C.
5. Advocate Health and Hospitals Corporation is exempt from federal income tax under 501(c)(3) of the Internal Revenue Code. Tr. p. 15; Applicant's Group Ex. No. 2-J.
6. Prior to 1999, Advocate Medical Group ("AMG") was a private practice medical group, consisting of 260 physicians, located in the Yachtman Pavilion. AMG was a professional service organization, organized for profit and was established as a pediatric special care facility. Tr. pp. 17-18, 32.
7. On January 1, 1999, Advocate Health and Hospitals Corporation and AMG entered into an "Affiliation Agreement," in which all 260 physicians of AMG became employees of Advocate in a separate division operated by Advocate. Compensation, health benefits, retirement and other benefits are paid by Advocate to the physicians. Tr. pp. 19-21; Applicant's Group Ex. No. 3.
8. Advocate's "Community Dividend Report" for 1999 states that "Advocate is committed to a community benefit program made up of these components: charity care; costs of unreimbursed care to Medicaid recipients;

unreimbursed costs of services and programs addressing community health, wellness and service needs; and donations.” Applicant’s Group Ex. No. 4.

9. Advocate’s “Community Dividend Report” for 1999 states that charity care for the year included service to 932,000 people and totaled \$36,181,000, which equates to 55% of Advocate’s operating revenues, excluding investment income. This figure includes \$12,554,000 in unreimbursed Medicaid care, \$8,970,000 in charity care and \$14,657,000 for reduced or free programs to the community. \$31,278,000 of the care provided by Advocate in 1999 was provided by “local” Advocate service areas, which include AMG and 14 other Advocate divisions, with service provided to 612,000 people. Tr. pp. 24-26; Applicant’s Group Ex. No. 4.
10. The “AMG Employment Agreement With Physicians” requires physician-employees to comply with AMG Division Operating Guidelines. [Exhibit C, Section 2.1(c)(iii)]. AMG Division Operating Guidelines state that a “Health Services Partnership Committee” will oversee the collaboration between AMG and Lutheran General Hospital including development and operation of services and programs to meet the needs of the community served by Lutheran General Hospital and charitable and mission related activities. [Exhibit B, Section 11(b)(vi) and (vii)] Tr. pp. 29-30, 34-35; Applicant’s Group Ex. No 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that Advocate Health & Hospitals Corporation has not demonstrated, by the presentation of testimony or through exhibits or

argument, evidence sufficient to warrant exempting the subject property from 1999 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:

(a) Institutions of public charity.
35 ILCS 5/15-65.

The above section provides that the property of "institutions of public charity" is not exempt by virtue of ownership alone. In fact, the General Assembly is

constitutionally prohibited from making such property exempt by ownership alone because of the way in which Article IX, Section 6 is worded. The first clause of that Section, which states that “[t]he General Assembly may by law exempt ... only the property of the State, units of local government and school districts” sets forth a very narrow class of entities whose properties are exempt by sole virtue of their ownership. “Institutions of public charity” do not fall within that class. Rather, they fall within the second clause of Article IX, Section 6, which contains an exempt use requirement. Accordingly, the property of such institutions cannot be subject to exemption, as a matter of Illinois constitutional law, unless the property is in fact used for a purpose that qualifies as “charitable” as that term is defined by Illinois law.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the court set forth guidelines for determining whether an organization qualifies as an institution of public charity and whether property is used for charitable purposes: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders, earns no profits or dividends; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

Advocate's ownership of the subject property was established by a deed evidencing that Lutheran Deaconess Home and Hospital of Chicago acquired title to the property on August 1, 1956. Applicant's Group Ex. No. 2. On January 1, 1997, Lutheran General Hospital and Advocate merged with Evangelical Hospital Corporation with the resulting corporation named Evangelical Hospital Corporation, later taking the name "Advocate." Applicant's Group Ex. No. 2 C and D.

I am unable to conclude from the evidence and testimony presented at the hearing that Advocate is in fact a charitable institution. Advocate offered into evidence its "1999 Community Dividend Report" and "State of Program Service Accomplishments for the year ended December 31, 1999." Both of these reports state that "in 1999, the [Advocate] system returned a 55 percent dividend to its communities, serving an estimated 932,000 people." Some of the charitable care provided in 1999 is as follows: community health education (speeches, seminars, wellness programs) \$1,072,703; health screening (discounted or free health testing) \$188,717; community health fairs, including screenings \$198,847; nutrition services (discounted meals and nutrition services for the homeless and homebound) \$223,322; health care services or goods provided free of charge and not billed \$2,044,859; discounted or free transportation to Advocate facilities \$324,239; pharmacy and equipment donations \$134,444.

While it is obvious that Advocate responds to the needs of the community, the evidence and testimony presented were not sufficient to assess Advocate as a charitable institution in accordance with the guidelines set forth in Korzen. No financial statements were admitted for Advocate, and I am unable to determine whether its "funds are derived mainly from public and private charity." No information on employee salaries was

admitted and I am unable to determine whether Advocate provides “gain or profit in a private sense” to persons connected with it. No operating manuals or bylaws were admitted and I am unable to determine what criteria Advocate uses for assessing whether a patient needs charitable care, whether any obstacles are placed in the way of a patient needing care, whether charitable care is dispensed to all who need and apply for it, and whether an indefinite number of persons are benefited. Although Advocate is exempt from federal income tax under 501(c)(3) of the Internal Revenue Code, this is in itself, not sufficient for me to conclude that Advocate is a charitable institution under the guidelines set forth in Korzen. Applicant’s Group Ex. No. 2-J.

Assuming *arguendo* that Advocate is a charitable institution, its ownership of the Yachtman Pavilion and its affiliation agreement with AMG effective January 1, 1999, are not sufficient to warrant exempting the subject property. As discussed previously, property of charitable institutions is not exempt by virtue of ownership alone. The subject property qualifies for exemption only if it is exclusively used for a purpose that qualifies as charitable as that term is defined in Illinois law. “The mere fact that property is held by an institution of public charity ... is not sufficient to exempt it from taxation. The property itself must be devoted to charitable purposes, and it must be in actual use by the institution in carrying out directly its charitable purposes.” International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956).

Based on the evidence and testimony presented at the hearing, I am unable to conclude that the 73.88% of the Yachtman Pavilion used by AMG is exclusively used for charitable purposes. The charitable exemption statute requires that the subject property “not otherwise [be] used with a view to profit.” 35 ILCS 5/15-65. No financial statements

were admitted into evidence for AMG for 1999. Testimony at the evidentiary hearing was that prior to January 1, 1999, AMG was a private practice medical group of about 260 physicians, operated “for profit.” Tr. p. 17. Without financial statements, I am unable to conclude that AMG was effectively not “used with a view to profit” in 1999.

The “Affiliation Agreement” between Advocate and AMG states at Section 3.1 that the authorized capital of AMG consists of 100 shares of Common Stock. “As of the date hereof, 176 shares of Common Stock are issued and outstanding, all of which are validly issued, fully paid and non assessable.” Applicant’s Group Ex. No. 3. This provision was not addressed or explained at the evidentiary hearing but it is inconsistent with the guidelines of Korzen which require that a charitable organization have no capital, capital stock, or shareholders. Exhibit C of the “Affiliation Agreement,” containing “Standard AMG Contract Provisions,” Section 3, “Obligations of AMG” states at Section 3.1 entitled “Salary” that “AMG shall pay the Physician the annualized Base Salary and Quarterly Settlement Compensation, Sign-On Bonus, Retention Bonus, Productivity Incentive Compensation and Positive Variance Incentive Compensation, if any, specified in the Employment Agreement.” Applicant’s Group Ex. No. 3. There was no testimony or evidence at the hearing as to whether the salaries, bonuses and incentives paid to the physicians were reasonable or how they compared to those paid by similar organizations. Without this evidence, I am unable to conclude that these payments were reasonable or that AMG is not providing “gain or profit in a private sense” to the physicians.

The “AMG Division Operating Guidelines” require that a “Health Services Partnership Committee” will oversee the collaboration between AMG and Lutheran

General Hospital including the development of services to meet the needs of the community and charitable and mission related activities. Applicant's Group Ex. No. 3. No operating manuals or bylaws of AMG were admitted into evidence. There was no testimony as to how AMG and Lutheran General Hospital "collaborate" on charitable care and I am unable to conclude that there was any "collaboration" in 1999. In closing argument, counsel for Advocate stated that "[T]he evidence had shown that there is charitable care on the premises consistent with the requirements of Advocate...[A]lthough we cannot quantify it, we have quantified the corporate identity of the user as a whole." Tr. p. 45. In fact, the only testimony offered by Mr. Kerns with regard to charity care actually dispensed from AMG was as follows:

You know, I would say from my personal knowledge of the Yachtman and the Children's Hospital, I can't give you specific figures, but those are the types of programs and hospitals where Advocate will bring a child in from another community or from outside of the area that's in need of a special surgical procedure or in need of a special transplant. I mean, those are the types of pediatric cases that you will read about in the local media or see on local media. We tend to do those kinds of free care initiatives when there's a particular child in need of a health procedure. Tr. p. 33.

No evidence was admitted showing that a "special surgical procedure" took place on the subject property in 1999. Even if a special surgical procedure had taken place on the subject property in 1999, this information would be insufficient for me to conclude that the use of the subject property was charitable for that year. Incidental acts of beneficence are legally insufficient to establish that the applicant is "exclusively" or primarily used for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

In response to a request to “quantify charitable care on the premises,” Mr. Kerns consistently relied on the “1999 Community Dividend Report” showing Advocate’s return of a 55% dividend, equal to \$36,181,000, to the community. He then stated:

You know, I can’t, as I sit here today, tell you what portion of that relates to Advocate Medical Group, what portion relates to Lutheran General Hospital, what portion relates to Bethany Hospital or Christ Hospital. But, you know, every one of the components of the system come together to make up that figure, and that’s all we’re required to do [for] purposes of coming together with our community services report for the IRS. Tr. p. 30.

This statement reveals a misconception of the nature of the charitable exemption for real property, which is specific to and depends on use of the subject property for charitable purposes. Without a quantification of the charitable care specifically dispensed by AMG in the 73.88% of the Yachtman Pavilion used by it in 1999, I am unable to conclude that this property is used exclusively for charitable purposes.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). The evidence and testimony presented at the hearing indicate that Advocate does perform some charitable acts. However, there was insufficient testimony and evidence for me to conclude either

that Advocate is a charitable institution as described in Korzen, or that the subject property was exclusively used for charitable purposes in 1999.

For these reasons, it is recommended that the Department's determination which denied the exemption from 1999 real estate taxes for 73.88% of the building and site on the grounds that the subject property was not owned or used by an institution of public charity should be affirmed, and that 73.88% of Cook County Parcel, Index Number 09-22-200-034-0000 should not be exempt from 1999 real estate taxes.

ENTER:

June 28, 2001

Kenneth J. Galvin